

EXECUTIVE SUMMARY

The Council of Insurance Agents & Brokers' Legal Counsel Working Group convened a virtual meeting to discuss federal and state actions undertaken in response to the novel coronavirus (COVID-19).

The Working Group was chaired by Working Group Chair Andy Impastato, Vice President, Insurance Counsel and Director of Industry Affairs for BXS Insurance, and was attended by over 50 of the insurance brokerage industry's top legal counsels. The virtual meeting was staffed by The Council's Associate General Counsel Gracie Gerlach, Chief Legal Officer Scott Sinder, Senior Vice President of Government Affairs Joel Wood, Vice President of Government Affairs Joel Kopperud, and Director of Government Affairs Blaire Bartlett.

FEDERAL UPDATES

With all eyes on the upcoming general election, the Working Group heard from Wood, Kopperud, and Bartlett, on an array of political issues, including results and current polling on competitive congressional races, the future of the filibuster and its implications for The Council's policy priorities, and predictions for congressional action during the lame duck session.

With Congress in recess until mid-September, a great degree of uncertainty remains as to the future of the next COVID-19 relief package and the broader congressional agenda. For months, the primary proposal on the table was House Speaker Nancy Pelosi's (D-CA) HEROES Act (i.e., "CARES 2.0"), which passed the House on May 15, 2020.

In late July, however, Senate Republicans introduced their proposal, a series of several bills that—collectively—could be incorporated into a smaller relief package. The bills address issues like liability protections, bolstering the Paycheck Protection Program, and grants for childcare. Democratic leadership has opposed some of these proposals, so Senate Republicans are expected to introduce a revised package that more accurately reflects the ongoing negotiations. But, as with all things in Congress right now, there is substantial uncertainty about both the timetable and the cost.

Beyond the next relief package and the upcoming elections, the Working Group also received updates from Wood, Kopperud, and Bartlett on several current and future federal issues, including:

- The upcoming roundtable with Representative Carolyn Maloney (D-NY) regarding her Pandemic Risk Insurance Act on September 10;
- The lack of certainty surrounding the legislative calendar ahead of November (e.g., funding, reauthorization of the National Flood Insurance Program, etc.); and,
- Other [recent proposals](#) in response to COVID-19 that may impact the insurance industry.

STATE UPDATES

Though we have seen a significant slow-down in state regulatory activity, there continues to be incremental movement on a few state legislative issues, including:

- *Liability Protections*. This is where we have seen the most action. In recent weeks, four new states—Georgia, Mississippi, Nevada, and Tennessee—have enacted broad liability

protections applicable to all operating businesses. There are, however, some states that have moved toward limiting such protections. For instance, New York enacted legislation that tailors some of the protections extended to health care facilities and providers.

- *Workers Compensation.* Though many states have enacted legislation on this issue (and a bill awaits the governor's signature in New Jersey), we are waiting to see what comes out of California in the coming weeks, as it continues to consider three separate proposals.
- *State OSHA Regulations.* Two states have taken action to establish formal regulatory workplace safety standards. Virginia acted first and, two weeks ago, Oregon followed suit, releasing its [draft COVID-19 temporary work standards](#). Though the work standards are not formal regulations, Oregon OSHA intends to adopt them by September 14 and continue working on a permanent rule, which is expected in 2021.

The Council will continue to monitor this activity, but for regular and recurring updates, please continue to use The Council's [COVID-19 Resource Center](#)—including the legislative trackers on business interruption coverage and workers' compensation, a legislative tracker on enacted civil liability protections, the state premium forbearance tracker, the state insurance regulatory tracker, and the broader regulatory tracker—as a source of the recent and pending developments at the state level.

NAIC

The NAIC held its Summer National Meeting in a virtual format. In particular, Working Group members discussed the Innovation and Technology (EX) Task Force's revised anti-rebating draft model law. The proposal, which would amend the anti-rebating provisions under the Unfair Trade Practices Act, has been a work in progress over the past year. The Council intends to submit comments on the current proposal, which are due on August 28, 2020. If approved by the Task Force, it will head to the Executive Committee for consideration.

In an effort to better leverage the NAIC meetings and to increase the efficacy of our NAIC advocacy efforts, we will be distributing a report on significant NAIC meetings going forward with a list of potential areas of engagement and critical take-aways highlighted at the top. The summary of the NAIC's Summer National Meeting can be reviewed [here](#).

During our next call, we hope to walk through each of the issues flagged in the report to discuss whether further CIAB engagement on any of those issues is warranted and, if so, to what end. Input on what could make the reports more impactful—including thoughts on what can or should be added—is also welcomed.

OTHER ISSUES

Members also spent time discussing other issues, including updates on:

- The Council of Employee Benefits Executives Advisory Committee's recent activity (i.e., identification of a compromise for/private market alternative to public option proposals, with a focus on working within the tenets of the Affordable Care Act to continue to promote access and affordability; development of a strategy to address the impact of COVID-19 on the insurance industry, short-term considerations like COBRA subsidies and stabilizing the individual market, and longer-term affects on reimbursement rates).
- The Council's ongoing efforts related to trade credit insurance (TCI) (e.g., recent publication of a report showcasing the benefits of TCI, efforts to rally support in the executive and legislative branches, etc.).
- Next steps on the NYDFS Vendor Certification project with APCIA.

SUBGROUP SIGN-UP

With fall around the corner, we will be circulating subgroup signup sheets! Below please find a list of the current subgroups, along with a brief description of their general focus. All interested Working Group members are encouraged to participate in any/all of the following subgroups:

- *Health & Employee Benefits*. All things Affordable Care Act, employee benefits, and regulatory compliance.
- *Licensing*. High-level and nuanced corporate and individual licensing issues, including—most recently—efforts to reform the appointments process.
- *Surplus Lines*. Large and small updates to state surplus lines laws (e.g., repeal of the broker fee cap for commercial lines in Michigan; taxation at the home-state rate in Florida; changes to export lists, due dates, stamping fees, etc.).
- *Rebating*. Developments related to state anti-rebating laws and the recent activity out of the NAIC.
- *Cyber*. Emerging risks, legal obstacles, and data privacy concerns, with a potential future focus on the ownership/handling of client data.
- *E&O Claims*. Claims incurred by brokers and best practices in the industry to address such claims.
- *Operations*. Staffing, hiring legal counsel, and the day-to-day operations of CIAB members' legal departments.

SEE YOU SOON!

We anticipate the next call will take place on **September 23, 2020**. If you have any questions in the meantime, please email Gracie Gerlach at gracie.gerlach@ciab.com.